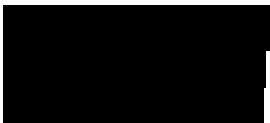


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201316108
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: January 16, 2013
County: Genesee County DHS #06

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a hearing was held on January 16, 2013. Claimant appeared and testified.

ISSUE

Did the Department properly reduce Claimant's Food Assistance Program (FAP) benefits beginning August 1, 2012?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing recipient of Food Assistance Program (FAP) benefits.
2. On August 29, 2012, Claimant's DHS case worker received an Email from a DHS Adult Services Provider which asserted that Claimant's paid chore provider had made a statement that he cashed the chore provider check and gave all the money to Claimant.
3. On October 17, 2012, \$ [REDACTED] was added to Claimant's Food Assistance Program (FAP) financial eligibility budget. Claimant was sent a Notice of Case Action (DHS-1605) which stated her Food Assistance Program (FAP) benefits would be reduced to \$ [REDACTED] beginning August 1, 2012.
4. On December 4, 2012, Claimant's Redetermination Form (DHS-1010) was processed. The \$ [REDACTED] was included in Claimant's Food Assistance Program (FAP) financial eligibility budget. Claimant was sent a Notice of Case Action (DHS-1605)

which stated her Food Assistance Program (FAP) benefits would be \$ [REDACTED] beginning December 1, 2012.

5. On December 7, 2012, Claimant filed a hearing request.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACS R 400.3001-3015.

The evidence submitted by the Department to support their action contains a significant evidentiary problem. Admission of evidence during an Administrative Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself.

The Michigan Rules of Evidence include:

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement.* A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant.* A "declarant" is a person who makes a statement.

(c) *Hearsay.* "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

The statement of the chore provider is hearsay and cannot be the basis of the decision in this hearing. That hearsay statement is the only evidence the Department presented on the question of whether Claimant was receiving \$729 per month which should be included in her Food Assistance Program (FAP) financial eligibility budget. Therefore the Department has not met its evidentiary burden of going forward by presenting sufficient evidence to support the case action. The Department cannot be upheld on this action.

A detailed analysis of the evidence presented, applicable Department policies, and reasoning for the decision are contained in the recorded record. During the hearing Claimant and the Department were informed of the decision and the reasoning behind the decision.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department DID NOT properly reduce Claimant's Food Assistance Program (FAP) benefits beginning August 1, 2012.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **REVERSED**.

It is further ORDERED that the additional \$ [REDACTED] of income be removed from Claimant's Food Assistance Program (FAP) financial eligibility budget. Any benefits Claimant was otherwise eligible for but did not receive because of this incorrect action will be supplemented to Claimant.

/s/ _____
Gary F. Heisler
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: January 22, 2013

Date Mailed: January 23, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

GFH/hj

cc:

[REDACTED]